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Supreme Court of the United States

OCTOBER TERM, 1950

EDWIN H. STERN, JR.,
Petitioner,
against
TEEVAL CO., INC.,
Respondent.

MORRIS JAWROWER,
Petitioner,
against
LEON LEIGHTON, *et al.*,
Respondent.

(2 causes)

BRIEF FOR THE CITY OF NEW YORK, AS *AMICUS CURIAE*, IN SUPPORT OF THE PETITIONS OF STERN AND JAWROWER FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND THE MUNICIPAL COURT OF THE CITY OF NEW YORK

JOHN P. MCGRATH,
Corporation Counsel of the City of New York,
Attorney for the City of New York, Amicus Curiae.

ANTHONY CURRERI,
Deputy Assistant Corporation Counsel, of Counsel.

17 APPEAL PRINTING CO., INC., 130 CEDAR STREET, NEW YORK, WO 4-3033

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The City of New York, as *amicus curiae,* respectfully requests that this brief be considered in support of the petitions of *Stern* and *Jawrower* for writs of certiorari to review the judgment of the Court of Appeals of the State of New York, entered in the above-entitled causes upon remittiturs to the Municipal Court of the City of New York.

Opinion Below

The opinion of the Court of Appeals covering all of these causes is reported in 301 N. Y. 346.

Jurisdiction

The authority for submission of this brief *amicus curiae* is contained in Rule 27, par. 9, of the Rules of the Supreme Court of the United States.

Question Presented

Were those provisions of New York City Local Law No. 73 of 1949 (Sharkey Law) which were invalidated by the Court of Appeals of the State of New York in conflict with the Federal Housing and Rent Act of 1947, as amended (50 U.S.C. Appendix 1881, *et seq.*), and hence violative of Article VI of the Constitution of the United States?

Statement

The petitions for writs of certiorari and the cross-petition filed by the respondent, Teeval Co., Inc., fully set forth the facts and the pertinent statutes. It is not the purpose of this brief to add to the labors of the Court by duplicating them.

The City of New York is vitally interested, nevertheless, in the decision of the question presented. Between October 7, 1949, the date of original enactment of the Sharkey Law, and May 1, 1950, the effective date of the New York State Rent Control Law (L. 1950, Ch. 250), some 40,000 tenants in the City of New York relied upon the provisions of the Sharkey Law in resisting their landlords' demands for rents higher than those which they had paid

on March 1, 1949. When the Court of Appeals invalidated those portions of the Sharkey Law which formed the basis of the tenants' defense against demands for increased rent, it left these tenants open to actions at law for the recovery of sums of money which, in individual cases, constituted sizeable amounts and brought them face to face with the prospect of eviction for non-payment of the increased rent demanded during that period.

It is true that the Sharkey Law, as validated by Laws of 1950, Chapter 1 of the State of New York, expired April 30, 1950. Obviously however, if the Sharkey Law did not conflict with the Federal Housing and Rent Act of 1947, as amended, and this Court so holds, then the threat of eviction for failure to pay rents above the March 1, 1949 level, which were demanded by landlords between October 7, 1949 and May 1, 1950, is removed. This follows regardless of the decision which may be reached on the question involving the validity of Section 13-a of the New York State Rent Control Law (L. 1950, Ch. 250).

Specification of Error

In declaring that "so much of the validated Sharkey Law as undertook to forbid collection of rent increases granted by the Federal Housing Expediter was void by operation of the supremacy clause of the Federal Constitution", the Court of Appeals erred in the following respects:

1. The provisions of the Federal Housing and Rent Act established maximum rents only and did not bar concurrent action on state or local level in the field of rent control.

2. The order of the Housing Expediter, acting pursuant to authority conferred by the Federal Housing and

Rent Act, which adjusted the maximum rent at a new and higher level, did not confer a vested right upon the landlord to demand or receive that amount as rent.

3. The Sharkey Law did not in terms "forbid the collection of rent increases granted by the Federal Housing Expediter"; rather, it laid down additional local requirements that landlords in the City of New York had to meet before the maximum rent level in existence on March 1, 1949 could be raised.

The principles of law which will aid in the solution of the problem are not disputed. It is not denied that if Congress acts properly to supersede or suspend the police powers of the states, and its purpose to effect that result is clearly manifested, then *any* state or local legislation in the field will be stricken as violative of the Supremacy Clause (Article VI) of the Constitution of the United States. *Reid* v. *Colorado,* 187 U. S. 137 (1902).

However, the Housing and Rent Act of 1947, as amended, is not such an act of Congress. The Court of Appeals below recognized (301 N. Y. 146, at p. 364) that "Emergency control of rents and evictions would seem to be an affair for concurrent Federal and State action, *at least until the field is pre-empted by Congress and so long as local legislation does not conflict with the letter or policy of any Federal enactment.*" (Emphasis supplied.) The Federal question that comes to this Court, therefore, is whether the Sharkey Law, a local attempt to act concurrently with Federal law in the field of rent control, did in fact conflict with the latter.

The respondent may, nevertheless, argue that Congress did pre-empt the field of rent control and, consequently, that the Sharkey Law is invalid regardless of whether conflict between that law and the Federal law did exist. The short answer to this contention, if raised, is contained

in the history of the Federal legislation. The 1946 amendment to the Emergency Price Control Act of 1942 (Public Law 548, 60 Stat. 664) added the following provision:

> "While maximum rents are in effect under this Act with respect to housing accommodations in any defense rental area, such housing accommodations shall not be subject to rent control by any state or local government."

This provision was not included in the Housing and Rent Act of 1947 (50 U.S.C.A. War App. §§1881-1902), although many of the provisions of the prior law were included. It was not included in the Act of 1948 (Public Law 464—80th Congress, Ch. 161, 2nd Session), nor was it included in the Act of 1949, which is now in issue. The removal of language expressing an intention to pre-empt the field is a clear manifestation of the intention of Congress *not* to suspend the police powers of the state.

Turning then to the basic question of conflict, it seems clear that the true meaning of the key words involved in this dispute must be ascertained before the principles of law culled from cases in other fields may be applied. The Federal Housing and Rent Act authorized the establishment of maximum rents and prohibited the demand of rents in excess thereof. Nowhere is there any proscription of the demand of rents below the maximum.

The Federal purpose to prevent or inhibit inflation was served by placing a ceiling on rents. But, unless this ceiling is also considered a floor, state legislation operating under the federal ceiling is not in conflict therewith. Analogous situations in other fields of legislation support the proposition that local law may be more restrictive than federal law in the same field, without conflicting with the latter. *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188

(1933); *Reid* v. *Colorado*, 187 U. S. 137 (1902); *Savage* v. *Jones*, 225 U. S. 501 (1912).

The order of the Housing Expediter adjusting the maximum rent, when viewed in this context, did no more than raise the Federal ceiling on the rent the landlord could demand without running afoul of the *Federal* law. The error committed in the Court below was in construing the order of the Housing Expediter as a *grant* of a rent increase, for it is clear that if the words, "maximum rent," are given their ordinary meaning, the landlord received no vested right in the increase by virtue of the Expediter's order. In consequence, the Sharkey Law, which required the landlord to comply with certain of its provisions before the higher rent could be demanded, took nothing from the landlord nor was it so repugnant to the Federal Law that the two "could not consistently stand together." *Sinnott* v. *Davenport*, 22 How. 227 (1895).

CONCLUSION

It is respectfully urged that the writs of certiorari should issue. The point involved is as novel as it is important, particularly to those citizens of the City of New York who placed their faith in the Sharkey Law. The Court of Appeals struck down the Sharkey Law and based its determination on a construction of a Federal statute and the Constitution of the United States. That determination should be reviewed by this Court.

Dated: New York, October 2, 1950.

Respectfully submitted,

JOHN P. MCGRATH,
Corporation Counsel of the
City of New York,
Attorney for the City of New York,
Amicus Curiae.

Enid